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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 816.

ERNEST NEWTON KALB, PETITIONER,

VS.

HENRY FEUERSTEIN AND HELEN FEUERSTEIN, RESPONDENTS.

PETITION FOR REHEARING.

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INDEX

Petition for Rehearing 1
Certificate of Counsel 5

Table of Cases

Union Land Bank vs. Byerly, 310 U. S. 1 3
Kalb vs. Feuerstein, 308 U. S. 433 5

Acts

Bankruptcy Act, Section 75 2
Act of March 3, 1933, Section 75 (q) 2, 3
Act of March 3, 1933, Section 75 (n) 4
Act of March 3, 1933, Section 75 (o) 4
Act of 1938 4

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To the Honorable Justices of the Supreme Court of the United States:

The petitioner respectfully presents his petition for rehearing of the denial of his petition for certiorari.

I.

Your petitioner respectfully urges that the Circuit Court below has sanctioned such a departure from the accepted and usual course of judicial procedure by the bankruptcy court as to call most urgently for the exercise of the power of supervision exercised by this Court. He be-

Note: All emphasis in this petition is supplied.

lieves that the Circuit Court below has decided a federal question in a way that has not been finally settled by this court. He believes that a principle of far reaching importance to the general public is here involved.

Although the principles contended for by the petitioner are of great importance to him personally they are of far greater importance to the public and to the largest single element of the population, that engaged in agriculture. The majority of this element are financially embarrassed not because of any fault in the farmers themselves but because of long standing public policies which Section 75 of the Bankruptcy Act belatedly has attempted to alleviate. He believes that the dismissal order of the bankruptcy court below, together with similar orders of other such courts, has thwarted the fixed national policy which was adopted and steadfastly maintained by six Congresses, in two presidential administrations, and repeatedly sustained by this court in eleven unanimous decisions.

II.

It was the legislative intent that Section 75 of the Bankruptcy Act should secure to financially distressed farmer debtors, **quick, certain, and definite relief, free from legal technicalities.** It was expected that the bankruptcy courts would actively guarantee to farmer debtors the full protection of the Act.

The Act of March 3, 1933, in Section 75 (q), which has never been changed, charged the bankruptcy courts to protect the procedural rights of a farmer debtor in pending proceedings.

Section 75 (q) reads:

"A conciliation commissioner shall upon request **assist any farmer debtor in preparing and filing a**

petition under this section **and in all matters subsequent thereto** arising under this section and **farmers shall not be required to be represented by an attorney** in any proceeding under this section."

The Act created a brand-new law, office, and officer. In the same breath that it created them it emphatically **enjoined the duty of effectuating the policy of the law —not its defeat.** Section 75 (q) thus emphasized the legislative mandate in three ways:

First: It required the conciliation commissioner to **assist the farmer debtor in preparing his petition.**

Second: It required the conciliation commissioner to **assist the farmer debtor in all subsequent proceedings.**

Third: It expressly stated that **"farmers shall not be required to be represented by an attorney."**

The report of the conciliation commissioner at R. 11, folio 12, shows that the farmer debtor did not have counsel at the various creditors' meetings.

III.

Farmer debtors have confidently relied upon Section 75 (q) and trusted bankruptcy courts to preserve their rights under Section 75. Yet the bankruptcy courts have repeatedly violated the most fundamental and ancient dogma of English and of American jurisprudence that no person shall be deprived of a right without due process of law—that he shall have due notice and an opportunity to be heard—in short that he shall have his day in court.

In *Union Land Bank* v. *Byerly*, 310 U. S. 1, in which three justices vigorously dissented at pages 11 to 16, the farmer debtor did not know for **eleven months** that the

bankruptcy court had without notice and without hearing entered an unlawful order to sell his farm contrary to Section 75 (n) and in violation of the express prohibitions of Section 75 (o) and also contrary to the bankruptcy court's own restraining order prohibiting the sale. His first knowledge of the order came when the state court **confirmed the foreclosure sale eleven months after it occurred.** Then it was too late, by the majority opinion of this Court, to seek a remedy.

In this Kalb case the conciliation commissioner, without notice, without hearing and without reason, recommended dismissal to the Judge of the bankruptcy court. The bankruptcy court on the same day of the secret recommendation, without notice and without hearing, unlawfully dismissed the entire farmer debtor proceedings. The actions of both conciliation commissioner and bankruptcy court were not only unlawful but **void.**

IV.

Despite the provisions for protection in Section 75 (q) which the Congress put into Section 75 in addition to the constitutional mantle of due process it has come about in practice that farmer debtors, alone of all classes of applicants to the courts for legal redress, are required to keep up an impossible degree of vigil and surveillance over court procedure in their cases.

Farmers necessarily live away from the seats of the bankruptcy courts. The sheer impossibility of the farmer debtor keeping watch over the bankruptcy court to see that the court does not violate the law is evident. It has become necessary that he make periodical trips to the court at periods of less than forty days under the Act of 1938. He must have time after discovering an unlawful act to prepare his appeal or notice of appeal within the

appeal period. In Montana a farmer debtor could be required to travel more than 900 miles. In the little state of Vermont he might have to travel 80 miles. In one district in Illinois the trip would be 242 miles.

V.

Although the restraining order issued by the bankruptcy court which restrains your petitioner from taking the possession of his farm to which the decision of this Court in *Kalb* v. *Feuerstein*, 308 U. S. 433, declared him to be entitled, is not of such widespread importance because it is peculiar to this case, yet your petitioner suggests that it effectually destroys the practical effect of that decision and should be considered by this Court.

Wherefore your petitioner prays that the denial of his petition for certiorari be reconsidered and granted.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
WILLIAM LEMKE,
Washington, D. C.,
Attorneys for Ernest Newton Kalb, Petitioner.

Lima, Ohio,
May 14, 1941.

Certificate of Counsel.

As one of counsel for the Petitioner I certify that the within petition for rehearing is presented in good faith and not for delay.

ELMER MCCLAIN,
One of Counsel for Petitioner.